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इस भाग में विशेष पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 31st January, 1992/Magha 11, 1913 (Saka)

THE SECURITIES AND EXCHANGE BOARD OF INDIA ORDINANCE, 1992

No. 5 OF 1992

Promulgated by the President in the Forty-third Year of the Republic of India.

An Ordinance to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities, market and for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is placed to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

1. (1) This Ordinance may be called the Securities and Exchange Board of India Ordinance, 1992.

(2) It extends to the whole of India.

Short
title,
extent
and com-
mence-
ment.

Definitions.

(3) It shall come into force at once.

2. (1) In this Ordinance, unless the context otherwise requires,—

- (a) "Board" means the Securities and Exchange Board of India established under section 3;
- (b) "Chairman" means the Chairman of the Board;
- (c) "existing Securities and Exchange Board" means the Securities and Exchange Board of India constituted under the Resolution of the Government of India in the Department of Economic Affairs No. 1(44)SE/86, dated the 12th day of April, 1988;
- (d) "Fund" means the fund constituted under section 14;
- (e) "member" means a member of the Board and includes the Chairman;
- (f) "notification" means a notification published in the Official Gazette;
- (g) "prescribed" means prescribed by rules made under this Ordinance;
- (h) "regulations" means the regulations made by the Board under this Ordinance;
- (i) "securities" has the meaning assigned to it in section 2 of the Securities Contracts (Regulation) Act, 1956.

(2) Words and expressions, used herein and not defined but defined in the Securities Contracts (Regulation) Act, 1956, or the Capital Issues (Control) Act, 1947, have the meanings assigned to them in those Acts.

42 of 1956.

42 of 1956.

29 of 1947.

CHAPTER II

ESTABLISHMENT OF THE SECURITIES AND EXCHANGE BOARD OF INDIA

Establishment and incorporation of Board.

3. (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Ordinance, a Board by the name of the Securities and Exchange Board of India.

(2) The Board shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Ordinance, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

(3) The head office of the Board shall be at Bombay.

(4) The Board may establish offices at other places in India.

Management of the Board.

4. (1) The Board shall consist of the following members, namely:—

- (a) a Chairman;
- (b) two members from amongst the officials of the Ministries of the Central Government dealing with Finance and Law;
- (c) one member from amongst the officials of the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934;

2 of 1934.

(d) two other members,

to be appointed by the Central Government.

(2) The general superintendence, direction and management of the affairs of the Board shall vest in a Board of members, which may exercise all powers and do all acts and things which may be exercised or done by the Board.

(3) Save as otherwise determined by regulations, the Chairman shall also have powers of general superintendence and direction of the affairs of the Board and may also exercise all powers and do all acts and things which may be exercised or done by that Board.

(4) The Chairman and members referred to in clauses (a) and (d) of sub-section (1) shall be appointed by the Central Government and the members referred to in clauses (b) and (c) of that sub-section shall be nominated by the Central Government and the Reserve Bank of India respectively.

(5) The Chairman and the other members referred to in clauses (a) and (d) of sub-section (1) shall be from amongst the persons of ability, integrity and standing who have shown capacity in dealing with problems relating to securities market or have special knowledge or experience of law, finance, economies, accountancy, administration or in any other discipline which, in the opinion of the Central Government, shall be useful to the Board.

5. (1) The term of office and other conditions of service of the Chairman and the members referred to in clause (d) of sub-section (1) of section 4 shall be such as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), the Central Government shall have the right to terminate the services of the Chairman or a member appointed under clause (d) of sub-section (1) of section 4, at any time before the expiry of the period prescribed under sub-section (1) by giving him notice of not less than three months in writing or three months' salary and allowances in lieu thereof, and the Chairman or a member, as the case may be, shall also have the right to relinquish his office, at any time before the expiry of the period prescribed under sub-section (1), by giving to the Central Government notice of not less than three months in writing.

Terms of office and conditions of service of Chairman and members of the Board.

6. (1) The Central Government shall remove a member from office if he—

Removal of member from office.

(a) is, or at any time has been, adjudicated as insolvent;

(b) is of unsound mind and stands so declared by a competent court;

(c) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude.

(d) is appointed as a director of a company;

(e) has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest :

Provided that no member shall be removed under this clause unless he has been given a reasonable opportunity of being heard in the matter.

Meetings

7. (1) The Board shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations.

(2) The Chairman or, if for any reason, he is unable to attend any meeting of the Board, any other member chosen by the members present at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Board shall be decided by a majority of the members of the Board present and voting, and, in the event of an equality of votes, the Chairman, or in his absence, the person presiding, shall have a second or casting vote.

Vacancies,
etc. not
to invali-
date pro-
ceedings of
Board.

8. No act or proceeding of the Board shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of the Board; or

(b) any defect in the appointment of a person as a member of the Board; or

(c) any irregularity in the procedure of the Board not affecting the merits of the case.

Officers
and em-
ployees
of the
Board.

9. (1) The Board may appoint such other officers and employees as it considers necessary for the efficient discharge of its functions under this Ordinance.

(2) The terms and other conditions of service of officers and employees of the Board appointed under sub-section (1) shall be such as may be determined by regulations.

CHAPTER III

TRANSFER OF ASSETS, LIABILITIES, ETC. OF THE EXISTING SECURITIES AND EXCHANGE BOARD TO THE BOARD

Transfer
of assets,
liabilities,
etc. of
existing
Securities
and
Exchang^t
Board
to the
Board.

10. (1) On and from the date of establishment of the Board,—

(a) any reference to the existing Securities and Exchange Board in any law other than this Ordinance or in any contract or other instrument shall be deemed as a reference to the Board;

(b) all properties and assets, movable and immovable, of, or belonging to, the existing securities and Exchange Board, shall vest in the Board;

(c) all rights and liabilities of the existing Securities and Exchange Board shall be transferred to, and be, the rights and liabilities of, the Board;

(d) Without prejudice to the provisions of clause (c), all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the existing Securities and Exchange Board immediately before that date, for or in connection with the purpose of the said existing Board shall be deemed to have been incurred, entered into, or engaged to be done by with or, for the Board;

(e) all sums of money due to the existing Securities and Exchange Board immediately before that date shall be deemed to be due to the Board;

(f) all suits and other legal proceedings instituted or which could have been instituted by or against the existing Securities and Exchange Board immediately before that date may be continued or may be instituted by or against the Board;

(g) every employee holding any office under the existing Securities and Exchange Board immediately before that date shall hold his office in the Board by the same tenure and upon the same terms and conditions of service as respects remuneration, leave, provident fund, retirement and other terminal benefits as he would have held such office if the Board had not been established and shall continue to do so as an employee of the Board or until the expiry of the period of six months from that date if such employee opts not to be the employee of the Board within such period.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, absorption of any employee by the Board in its regular service under this section shall not entitle such employee to any compensation under that Act or other law and no such claim shall be entertained by any court, tribunal or other authority.

CHAPTER IV

POWERS AND FUNCTIONS OF THE BOARD

11. (1) Subject to the provisions of this Ordinance, it shall be the duty of the Board to protect the interest of investors in securities and to promote the development of, and to regulate the securities market by such measures as it thinks fit.

Functions
of Board.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for—

(a) regulating the business in stock exchanges and any other securities markets;

(b) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;

(c) registering and regulating the working of collective investment schemes including mutual funds;

(d) promoting and regulating self-regulatory organisations;

(e) prohibiting fraudulent and unfair trade practices relating to securities markets;

(f) promoting investors' education and training of intermediaries of securities markets;

(g) prohibiting insider trading in securities;

(h) regulating substantial acquisition of shares and take-over of companies;

(i) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges and intermediaries and self-regulatory organisations in the securities market;

(j) performing such functions and exercising such powers under the provisions of the Capital Issues (Control) Act, 1947 and the Securities Contracts (Regulation) Act, 1956, as may be delegated to it by the Central Government;

(k) levying fees or other charges for carrying out the purpose of this section;

(l) conducting research for the above purposes;

(m) performing such other functions as may be prescribed.

29 of 1947.
42 of 1956.

CHAPTER V

REGISTRATION CERTIFICATE

Registration of stock-brokers, sub-brokers, share transfer agents, etc.

12. (1) No stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the rules made under this Ordinance:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application.

(2) Every application for registration shall be in such manner and on payment of such fees as may be determined by regulations.

(3) The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations:

Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

CHAPTER VI

FINANCE, ACCOUNTS AND AUDIT

Grants by the Central Government.

13. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Board grants of such sums of money as the Central Government may think fit for being utilised for the purposes of this Ordinance.

14. (1) There shall be constituted a fund to be called the Securities and Exchange Board of India General Fund and there shall be credited thereto— Fund,

(a) all grants, fees and charges received by the Board under this Ordinance;

(b) all sums received by the Board from such other sources as may be decided upon by the Central Government.

(2) The Fund shall be applied for meeting—

(a) the salaries, allowances and other remuneration of members and officers and other employees of the Board;

(b) the expenses of the Board in the discharge of its functions under section 11;

(c) expenses on objects and for purposes authorised by this Ordinance.

15. (1) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor General of India.

Accounts and audit.

(2) The accounts of the Board shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Board shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board.

(4) The accounts of the Board as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

CHAPTER VII

MISCELLANEOUS

16. (1) Without prejudice to the foregoing provisions of this Ordinance, the Board shall, in exercise of its powers or the performance of its functions under this Ordinance, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Power of Central Government to issue directions.

Provided that the Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

Power of
Central
Govern-
ment to
supersede
the
Board.

17. (1) If at any time the Central Government is of opinion—

- (a) that on account of grave emergency, the Board is unable to discharge the functions and duties imposed on it by or under the provisions of this Ordinance;
- (b) that the Board has persistently made default in complying with any direction issued by the Central Government under this Ordinance or in the discharge of the functions and duties imposed on by or under the provisions of this Ordinance and as a result of such default the financial position of the Board or the administration of the Board has deteriorated; or

(c) that circumstances exist which render it necessary in the public interest so to do, the Central Government may, by notification, supersede the Board for such period, not exceeding six months, as may be specified in the notification.

(2) Upon the publication of a notification under sub-section (1) superseding the Board,—

(a) all the members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Ordinance, be exercised or discharged by or on behalf of the Board, shall until the Board is reconstituted under sub-section (3), be exercised and discharged by such person or persons as the Central Government may direct; and

(c) all property owned or controlled by the Board shall, until the Board is reconstituted under sub-section (3), vest in the Central Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may reconstitute the Board by fresh appointments and in such case any person or persons who vacated their offices under clause (a) sub-section (2), shall not be deemed disqualified for appointment:

Provided that the Central Government may, at any time, before the expiration of the period of supersession, take action under this sub-section.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

Returns
and
reports.

18. (1) The Board shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing programme for the promotion and development of the securities market, as the Central Government may, from time to time, require.

(2) Without prejudice to the provisions of sub-section (1), the Board shall within sixty days, after the end of each financial year, submit to the Central Government a report in such form, as may be prescribed, giving a true and full account of its activities, policy and programmes during the previous financial year.

(3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

19. The Board may by general or special order in writing, delegate to any member, officer of the Board or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Ordinance (except the powers under section 23) as it may deem necessary.

20. (1) Any person aggrieved by an order made under this Ordinance, or the rules or regulations made thereunder may prefer an appeal to the Central Government within such time as may be prescribed.

(2) No appeal shall be admitted if it is preferred after the expiry of period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

(3) Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

(4) The procedure for disposing of an appeal shall be such as may be prescribed:

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

21. Nothing in this Ordinance shall exempt any person from any suit or other proceedings which might, apart from this Ordinance, be brought against him.

Delega-
tion.

Appeals.

Savings.

45 of 1960.

Members,
Officers
and em-
ployees
of the
Board to
be public
servants.

Protec-
tion of
action
taken in
good
faith.

Penalty.

23. No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Central Government or any member, officer or other employee of the Board for anything which is in good faith done or intended to be done under this Ordinance or the rules or regulations made thereunder.

24. Whoever contravenes or attempts to contravene or abets the contravention of the provisions of this Ordinance or any rules or regulations made thereunder shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

27 of 1967.
43 of 1961.

Exemp-
tion from
tax on
wealth
and
income.

25. Notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-tax Act, 1961 or any other enactment for the time being in force relating to tax on wealth, income, profits or gains—

(a) the Board;

(b) the existing Securities and Exchange Board from the date of its constitution to the date of establishment of the Board,

shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived.

Cogni-
zance of
offences
by courts.

26. (1) No court shall take cognizance of any offence punishable under this Ordinance or any rules or regulations made thereunder, save on a complaint made by the Board with the previous sanction of the Central Government.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Ordinance.

Offences
by com-
panies.

27. (1) Where an offence under this Ordinance has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Ordinance, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Ordinance has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner of the firm.

Power to
exempt.

28. If the Central Government is of the opinion that it is necessary or expedient so to do in public interest, it may, by order published in the Official Gazette, exempt any person or class of persons buying or selling securities or otherwise dealing with the securities market from the operation of the provisions of section (1) of section 12.

Power to
make
rules.

29. (1) The Central Government may, by notification, make rules for carrying out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the terms of office and other conditions of service of the Chairman and the members under sub-section (1) of section 5;

(b) the additional functions that may be performed by the Board under section 11;

(c) the conditions subject to which registration Certificate is to be issued under sub-section (1) of section 12;

(d) the manner in which the accounts of the Board shall be maintained under section 15;

(e) the form and the manner in which returns and report to be made to the Central Government under section 18;

(f) any other matter which is to be, or may be prescribed or in respect of which provision is to be, made by rules.

30. (1) The Board may, with the previous approval of the Central Government, by notification, make regulations consistent with this Ordinance and the rules made thereunder generally to carry out the purposes of this Ordinance.

Power to make regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the times and places of meetings of the Board and the procedure to be followed at such meetings under sub-section (1) of section 7 including quorum necessary for the transaction of business;

(b) the terms and other conditions of service of officers and employees of the Board under sub-section (2) of section 9;

(c) the amount of fee to be paid for registration certificate and manner of suspension or cancellation of registration certificate under sub-sections (2) and (3) of section 12.

31. Every rule and every regulation made under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Rules and regulations to be laid before Parliament.

32. The provisions of this Ordinance shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Application of other laws not barred.

33. The enactments specified in Parts I and II of the Schedule to this Ordinance shall be amended in the manner specified therein and such amendments shall take effect on the date of establishment of the Board.

Amendment of certain enactments.

34. (1) If any difficulty rises in giving effect to the provisions of this Ordinance, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as may appear to be necessary for removing the difficulty:

Power to remove difficulties.

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made before each House of Parliament.

THE SCHEDULE

(See section 33)

AMENDMENT OF CERTAIN ENACTMENTS

PART I

AMENDMENTS TO THE CAPITAL ISSUES (CONTROL) ACT, 1947
(29 OF 1947)

Section 10, for "to that Government", substitute "to that Government or the Securities and Exchange Board of India"

PART II

AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956
(42 OF 1956)

1. Section 2, in clause (h), for sub-clause (ii), substitute
" (ii) Government securities;
 (iia) such other instruments as may be declared by the Central Government to be securities; and".
2. Section 6,—
 - (i) in sub-section (1), for "Central Government", substitute "Securities and Exchange Board of India";
 - (ii) in sub-section (2), for "by the Central Government", substitute "by the Securities and Exchange Board of India";
 - (iii) in sub-section (3), for "Central Government" wherever it occurs, substitute "Securities and Exchange Board of India";
3. Section 9, for "Central Government" wherever it occurs, substitute "Securities and Exchange Board of India";
4. Section 10, for "Central Government" wherever it occurs, substitute "Securities and Exchange Board of India";
5. Section 17, in sub-section (1), for licence granted by the Central Government", substitute "licence granted by the Securities and Exchange Board of India";
6. Section 21, for "Central Government", substitute "Securities and Exchange Board of India";
7. Section 22A, in sub-section (3), for clause (b), substitute,
 "(b) that the transfer of the securities is in contravention of any law or rules made thereunder or any administrative instructions or conditions of listing agreement laid down in pursuance of such laws or rules;";
8. Section 23, for "Central Government under section 21 or section 22", substitute "Securities and Exchange Board of India under section 21 or the Central Government under section 22".

9. After section 29, insert,—

“29A. The Central Government may, by order published in the Official Gazette, direct that the powers exercisable by it under any provision of this Act shall, in relation to such matters and subject to such conditions, if any as may be specified in the order, be exercisable also by the Securities and Exchange Board of India.”.

Power to
delegate.

R. VENKATARAMAN,
President.

V. S. RAMA DEVI.
Secy. to the Govt. of India.

